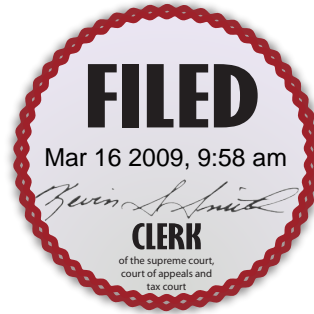


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES GROVE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 71A05-0808-CR-456
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0505-FA-20

March 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Charles Grove was convicted of possession of cocaine¹ as a Class C felony after a jury trial and sentenced to eight years in the Department of Correction. He appeals, raising the following restated issue: whether the trial court abused its discretion when it admitted evidence found in Grove's truck during a warrantless search because the evidence was inadmissible under both the Fourth Amendment to the United States Constitution and Article 1, section 11 of the Indiana Constitution.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 26, 2005, officers with the Metro Special Operations Section ("MSOS"), which is the narcotics unit of the South Bend Police Department, searched the home of G.H. pursuant to a search warrant and discovered drugs. G.H. was charged with drug offenses, and she agreed to cooperate with the MSOS and become an informant in an attempt to reduce her charges. She offered to set up a drug transaction with Grove.

On April 27, 2005, G.H. met with Sergeant Jeffrey Giannuzzi of the MSOS and called Grove using the phone number she had for him as Sergeant Giannuzzi listened in on the conversation. At that time, Grove stated that he was busy and would call G.H. back, which he later did. After a third phone call, Grove told G.H. that he was ready to do the transaction and said that he had to stop by his girlfriend's house to pick up the drugs. Grove agreed to bring the drugs to G.H.'s house in Mishawaka. Sergeant Giannuzzi knew the identity of Grove's girlfriend and the address of her residence so he placed both Grove's residence and

¹ See Ind. Code § 35-48-4-6.

his girlfriend's residence under surveillance.

Officers with the MSOS observed Grove drive up to his girlfriend's residence in a red pickup truck. After Grove left the residence, Lieutenant George Obren followed the truck as Grove headed toward Mishawaka. While being followed, Grove travelled between fifty-five and sixty miles per hour on streets with posted speed limits of thirty to thirty-five miles per hour. Lieutenant Obren, who was undercover and driving an unmarked police car, radioed Captain Dan Gebo of the Mishawaka Police Department, who was assisting the MSOS that day, to stop Grove for speeding. Captain Gebo pulled in front of Lieutenant Obren and initiated a traffic stop on 8th Street in Mishawaka. This was approximately a mile to a mile-and-a-half from the pre-arranged location for the drug transaction.

Lieutenant Obren parked his unmarked vehicle around the corner from the traffic stop and walked to the location of the traffic stop. Captain Gebo approached Grove's truck and asked for his license and registration, which Grove gave to the officer. Because of information given to Captain Gebo that Grove was known to carry a handgun, the officer asked Grove to exit the truck so that he could perform a patdown search for officer safety. When Grove stepped out of the truck, he had his wallet, some papers, and plastic bags in his hands. Captain Gebo asked Grove to put the items down, and Grove placed them in the bed of the truck in a slot behind the driver's side of the cab. Captain Gebo then took Grove to the back of the truck and placed him in the custody of other MSOS officers who had arrived at the scene.

At that time, Captain Gebo went back to his squad car and ran Grove's driver's license and registration information through dispatch. Within five minutes of the initial traffic stop, Corporal Chad Thomas arrived with his canine partner, Zeek. During a free air exterior sniff over around Grove's truck, Zeek alerted to the slot between the bed of the truck and the cab. From that location, officers retrieved the papers and plastic bags that Grove had earlier placed there. The plastic bags contained substances that were later determined to be cocaine. One bag contained 16.25 grams of powder cocaine, and the other contained 3.41 grams of crack cocaine.

The State charged Grove with possession of marijuana as a Class D felony, possession of cocaine as a Class C felony, and possession of cocaine within 1,000 feet of school property as a Class A felony. Grove filed a motion to suppress the evidence found during the search of his truck.² The trial court granted the motion and suppressed the evidence on March 28, 2007. The State filed a motion to reconsider, which was denied by the trial court. Several months later, the trial court denied Grove's motion to suppress with respect to the evidence found during the search of his truck, and the evidence was admitted at Grove's jury trial over his objection. The jury found him guilty of Class C felony possession of cocaine, and the trial court sentenced him to eight years in the Department of Correction. Grove now appeals.

² Grove later filed a second motion to suppress the evidence found pursuant to a search of his girlfriend's residence, which evidence was the basis of the Class A felony possession of cocaine charge. The trial court granted this motion and suppressed the evidence, and the State subsequently dismissed that charge.

DISCUSSION AND DECISION

Grove argues that the evidence found during the warrantless search of his truck should have been suppressed and should not have been admitted at his trial. Although his argument is challenging the denial of his motion to suppress, the issue is more appropriately framed as whether the trial court abused its discretion when it admitted the challenged evidence at trial. *Scott v. State*, 855 N.E.2d 1068, 1071 (Ind. Ct. App. 2006). “Because we are considering the issue after a completed trial, we review the admission of evidence for an abuse of discretion.” *Taylor v. State*, 891 N.E.2d 155, 158 (Ind. Ct. App. 2008), *trans. denied, cert. denied* (2009). We will consider the conflicting evidence most favorable to the trial court’s ruling and any uncontested evidence favorable to the defendant. *Id.* An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or it misinterprets the law. *Id.*

Grove contends that the trial court abused its discretion because the evidence found in his truck should not have been admitted at his trial. He claims that the stop and search of his truck violated his constitutional right to be free from unreasonable search and seizure both under the Fourth Amendment to the United States Constitution and Article 1, section 11 of the Indiana Constitution.

The Fourth Amendment protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. U.S. Const. amend. IV; *Krise v. State*, 746 N.E.2d 957, 961 (Ind. 2001). Generally, a search warrant is a prerequisite to a constitutionally proper search and seizure. *Halsema v. State*,

823 N.E.2d 668, 676 (Ind. 2005). When a search or seizure is conducted without a warrant, the State bears the burden of proving that an exception to the warrant requirement existed at the time of the search or seizure. *Id.* Under the Fourth Amendment, the police can briefly detain an individual for investigatory purposes if, the officer has reasonable suspicion that criminal activity may have occurred or be about to occur. *Malone v. State*, 882 N.E.2d 784, 786 (Ind. Ct. App. 2008). Reasonable suspicion entails some minimal level of objective justification for making a stop, something more than an unparticularized suspicion or hunch, but less than the level of suspicion required for probable cause. *Manigault v. State*, 881 N.E.2d 679, 685-86 (Ind. Ct. App. 2008); *Wilson v. State*, 670 N.E.2d 27, 29 (Ind. Ct. App. 1996). We examine the reasonableness of an officer's suspicion "on a case-by-case basis by engaging in a fact-sensitive analysis of the totality of the circumstances." *Beverly v. State*, 801 N.E.2d 1254, 1261 (Ind. Ct. App. 2004), *trans. denied*.

Here, G.H. had been charged with drug offenses and agreed to assist the MSOS in their investigations in an attempt to reduce her charges. She identified Grove as an individual from whom she could purchase narcotics, and she was able to contact him since she had his telephone number. G.H. met with Sergeant Giannuzzi of the MSOS and placed a call to Grove to set up a drug transaction while the officer listened in on the conversation.³ Grove agreed to sell cocaine to G.H. at her residence in Mishawaka and told G.H. that he had to stop by his girlfriend's house to retrieve the drugs. Sergeant Giannuzzi knew the identity

³ We note that the fact that the officer was able to listen in on the G.H.'s conversation with Grove sufficiently established the reliability of her information as it showed some basis for her knowledge. *See Teague v. State*, 891 N.E.2d 1121, 1128 (Ind. Ct. App. 2008) (one of the ways to establish that an informant's information is trustworthy is that some basis for the information is shown).

of Grove's girlfriend, the address of her residence, and that Grove drove a red pickup truck. When surveillance was set up at the girlfriend's house, Grove was observed arriving in a red pickup truck and leaving in the direction of Mishawaka. All of these actions by Grove corroborated his previous statements to G.H. about what he needed to do before the drug transaction would occur at her home.

This information created reasonable suspicion for the police to stop Grove's truck and investigate whether he was in possession of cocaine. "The reasonable suspicion requirement is met where the facts known to the officer at the moment of the stop, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur.'" *Combs v. State*, 851 N.E.2d 1053, 1057 (Ind. Ct. App. 2006) (quoting *State v. Atkins*, 834 N.E.2d 1028, 1032 (Ind. Ct. App. 2005), *trans. denied*), *trans. denied*. The information given by G.H. was verified through the police surveillance and corroborated by Grove's statements and actions. It was reasonable for the officers to believe that, after he left his girlfriend's residence that he was in possession of the cocaine he intended to sell to G.H. Therefore, the investigatory stop was proper under the Fourth Amendment.

After Grove's truck was stopped by Captain Gebo, the officer requested Grove's driver's license and registration and asked him to exit the truck so a patdown search could be performed as the officer had information that Grove often carried a handgun. Within five minutes of the initial stop, Corporal Thomas arrived on the scene with his canine partner, Zeek. In fact, by the time that Lieutenant Obren was able to park his unmarked car around

the corner and arrive at the traffic stop on foot, Corporal Thomas was already there. “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop” and “the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” *Lockett v. State*, 747 N.E.2d 539, 541-42 (Ind. 2001). We believe that this detention of Grove was brief and no longer than necessary to verify or dispel the officers’ suspicions.

Further, “[a] dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.” *State v. Gibson*, 886 N.E.2d 639, 641 (Ind. Ct. App. 2008) (quoting *Illinois v. Caballes*, 543 U.S. 405, 410, 125 S. Ct. 834, 838, 160 L. Ed. 2d. 842, 848 (2005)). Here, the stop of Grove’s truck was based upon reasonable suspicion that he possessed cocaine, and the approximately five-minute detention to conduct a dog sniff of the exterior of the truck, which is not a search under the Fourth Amendment, was not unreasonable. Additionally, Zeek’s positive alert on Grove’s truck established probable cause to search the truck. The alert of a dog trained to detect narcotics, however, is by itself sufficient to provide the probable cause necessary to obtain a search warrant, and the location of the contraband was a readily mobile vehicle, which justified the warrantless search. *See Myers v. State*, 839 N.E.2d 1146, 1152 (Ind. 2005) (finding that because positive narcotics dog response provided probable cause to search readily mobile vehicle, warrantless search of vehicle was justified under automobile exception). The trial court did not abuse its

discretion when it found the evidence admissible under the Fourth Amendment.

Under the Indiana Constitution, the legality of a governmental search turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). Our Supreme Court has explained the reasonableness of a search or seizure as turning on a balance of: (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. *Id.* at 361.

Article 1, section 11 "permits police to stop and briefly detain a motorist if the officer reasonably suspects that the motorist is engaged in, or about to engage in, illegal activity" and that there is "nothing unreasonable in permitting an officer, who may have knowledge or suspicion of unrelated criminal activity by the motorist, to nevertheless respond to an observed traffic violation." *Mitchell v. State*, 745 N.E.2d 775, 786 (Ind. 2001). A traffic stop "is unlawful if there is an objectively justifiable reason for it, and the stop may be justified on less than probable cause." *Ransom v. State*, 741 N.E.2d 419, 421 (Ind. Ct. App. 2000), *trans. denied* (2001).

Herbert v. State, 891 N.E.2d 67, 70 (Ind. Ct. App. 2008), *trans. denied* (2009). Our Supreme Court has also stated that, during an investigatory stop, an officer is permitted to detain a motorist briefly only as necessary to complete the officer's work related to the illegality for which the motorist was stopped. *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006).

Here, after agreeing to assist the police in their drug investigations, G.H. informed the police that she could purchase drugs from Grove, and she was able to contact him by calling his telephone number. When she contacted Grove, an officer with the MSOS listened in to their conversation, and Grove agreed to sell G.H. cocaine at her residence in Mishawaka after

he picked up the drugs at his girlfriend's house. As Sergeant Giannuzzi knew the identity and address of Grove's girlfriend and that Grove drove a red pickup truck, he set up surveillance at the address. Officers observed Grove arrive at the girlfriend's house, and when he left, he drove in the direction of Mishawaka. As he drove in the direction of G.H.'s residence, Lieutenant Obren, who was following in an unmarked car, observed Grove speeding and had Captain Gebo initiate a traffic stop on Grove's truck once he was in Mishawaka and within one to one-and-a-half miles of G.H.'s house. G.H.'s information was verified through police observation, and Grove's statements to G.H. were corroborated through police surveillance. The traffic stop of Grove's truck was reasonable as the police reasonably suspected that Grove was engaged in the illegal activity of possession of cocaine.

We also conclude that the brief detention of Grove to conduct the canine sweep was reasonable. When the stop occurred, Captain Gebo requested Grove's driver's license and registration and had Grove step outside the vehicle so a patdown could be performed. The record indicates that less than five minutes after Grove was stopped, and while Captain Gebo was still running Grove's information through dispatch, Corporal Thomas arrived with his canine partner, Zeek. *Tr.* at 38, 331-32. When Zeek performed a free air exterior sniff of Grove's truck, he alerted at the gap between the truck cab and bed, and plastic bags were found in that location that were later determined to contain cocaine. The detention of Grove was brief and no longer than necessary to complete the officers' "work related to the illegality for which [Grove] was stopped." *Quirk*, 842 N.E.2d at 340. Under the totality of the circumstances, we conclude that the police had reasonable suspicion to stop Grove, and

his brief detention was reasonable. The trial court did not abuse its discretion in admitting the evidence discovered during the stop at Grove's trial.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.